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In re Application of	:	
BROWN, et al.	:	DECISION ON PETITION
Application No.: 09/914,867	:	
PCT No.: PCT/US00/05427	:	UNDER 37 CFR 1.137(b)
Int. Filing Date: 02 March 2000	:	
Priority Date: 02 March 1999	:	
Attorney Docket No.: 1240.026	:	
For: BRAKE SYSTEM HAVING HYDRAULIC:	:	
ACCUMULATOR AND/OR COMBINED :	:	
SERVICE BRAKE AND PARK AND :	:	
HOLD BRAKE	:	

This decision is in response to applicant's "Petition Under 37 CFR § 1.137(b) for Revival of an Application for Patent Abandoned Unintentionally" filed 04 September 2001 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 02 March 2000, applicant filed international application PCT/US00/05427 which claimed priority of an earlier application filed 02 March 1999. A Demand for international preliminary examination was not filed prior to the expiration of nineteen months from the priority date. Accordingly, the twenty-month period for paying the basic national fee in the United States expired at midnight on 02 November 2000.

On 02 November 2000, the application became abandoned for failure to pay the basic national fee for a U.S. national stage entry application.

On 04 September 2001, applicant filed the present petition accompanied by a "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371;" payment of the basic national fee, an Information Disclosure Statement, an assignment document for recording and an executed combined declaration and power of attorney of the inventors.

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (1), the proper response was the payment of the basic national fee. Applicants have included this payment along with the present petition.

As to Item (2), applicants have included this payment along with the present petition.

With regard to Item (3), applicant's statement that, "the entire delay in filing the required reply, from the November 2, 2000 due date for replying to an outstanding action by entering the national phase until the filing of a grantable petition under 37 CFR § 1.137(b) was unintentional" satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

A review of the filed declaration finds that it does not comply with 37 CFR 1.497(a)-(b). The name of the first inventor is listed as David D. BROWN on the declaration and executed as "Donald D. Brown", the name which appears as the first named inventor on the International Application. In addition, the signature for the fourth named inventor, Joseph A. LANG is executed by what appears to be an executrix, "Susan R. Lang" however, applicant has not provided an explanation pursuant to 37 CFR 1.42 regarding the death of this inventor.

The first sentence of 37 CFR 1.42 states:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

While the declaration is executed by Susan R. LANG as the executrix of the estate of deceased inventor Joseph A. LANG, the declaration does not set forth the residence, post office address and country of citizenship of Susan R. LANG as required under 37 CFR 1.497(b). This information must be provided for both the deceased joint inventor, Joseph A. LANG and the

executrix, Susan R. LANG.

Lastly, the declaration contains three second pages. This suggests that the enclosed declaration was constructed from numerous complete declarations or that the inventors forwarded to counsel only the signatures pages of the declaration. Either alternative renders the submitted declaration defective under 37 CFR 1.497. While each inventor need not execute the same oath or declaration, where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration. (See MPEP 201.03 B. Oath or Declaration.)

CONCLUSION

For the reasons stated above, the petition for revival is GRANTED.

As authorized, \$130.00 will be deducted from Deposit Account No.: 50-1170 as payment of the surcharge for providing an oath or declaration later than twenty months from the priority date.

Applicants are hereby afforded TWO (2) MONTHS from the mail date of this decision to file an oath or declaration in compliance with 37 CFR 1.497 (a)-(b). Regarding the status of the fourth named inventor, Joseph A. LANG, applicant's response should include a cover letter entitled, "Petition Under 37 CFR 1.42." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter directed to the attention of the PCT Legal Office.



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